

UNITED STATES OF AMERICA, ) 3:14-cv-00506-HDM-VPC  
)  
Plaintiff, )  
) ORDER  
vs. )  
)  
\$102,283.44 IN UNITED STATES )  
CURRENCY SEIZED FROM BANK OF )  
AMERICA ACCOUNT, )  
)  
Defendant.

## Procedural History

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1 entered its order for summons and warrant of arrest in rem for  
2 property and notice (#3), and the clerk of the court issued a  
3 summons and warrant of arrest in rem for property (#4) on October  
4 15, 2014. The complaint, order, summons, and notice were served on  
5 Alvarez, who filed an answer on November 14, 2014 (#8). On November  
6 28, 2014, the government filed its motion to strike claimant's  
7 answer (#13) on the basis that Alvarez had failed to timely file a  
8 verified claim of interest. Alvarez subsequently filed his claim on  
9 December 15, 2015 (#15), which led the government to file a second  
10 motion to strike (#20).<sup>1</sup>

11 The court held a hearing on the motions on March 26, 2015. The  
12 court took the motions under advisement and allowed the parties  
13 time to attempt to resolve the case. By subsequent orders (## 30,  
14 32), the court approved the parties' stipulations for additional  
15 time to discuss a possible resolution.

16 On June 12, 2015, the parties advised the court they were  
17 unable to resolve the case.

## 18 **The Motions**

19 The government seeks to strike the answer filed by Alvarez on  
20 the ground that he failed to file a verified claim to the subject  
21 property. The government asserts the filing of such a claim is a  
22 jurisdictional prerequisite to participation in the instant  
23 forfeiture proceedings. Alvarez responded by filing a verified  
24 claim (#15). The government thereafter filed a motion to strike  
25 the verified claim on the basis that Alvarez "failed to file a  
26 verified claim until long after the deadline for such a filing had  
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28 <sup>1</sup>This time on Alvarez's verified claim.

1 expired and then only did so after the delinquency was brought to  
2 [his] attention through the filing of the [government's] pending  
3 motion to strike the answer." #20 Mot. at 1:22-2:1.

4 In Alvarez's opposition to the motion to strike the answer,  
5 his counsel contends he submitted a claim opposing forfeiture to  
6 the DEA, Asset Forfeiture Section, on May 28, 2014. Additionally,  
7 Alvarez filed a petition for remission or mitigation of a criminal  
8 or civil forfeiture action by the United States Department of  
9 Justice on July 16, 2014. Nevertheless, Alvarez concedes that after  
10 the filing of the complaint for forfeiture in rem by the  
11 government, he failed to file a verified claim along with his  
12 answer.

13 Alvarez's counsel asserts he believes he sent the verified  
14 claim to Alvarez for his signature, but is unsure whether it was  
15 lost by the department of corrections or if his counsel's office  
16 "failed to actually include it along with the answer" in its  
17 mailing to Alvarez. Response (#17) at 4:8-11. Counsel claims he has  
18 had a difficult time corresponding with Alvarez in part due to the  
19 language barrier and in part due to Alvarez's relocation to  
20 different prisons. *Id.* at 4:15-19. Alvarez's counsel avers,  
21 however, that the government was put on notice of Alvarez's claim  
22 by the original filings with the DEA and that it is not unduly  
23 prejudiced by the late filing of the verified claim. *Id.* at 5:1-5.

#### 24 **Legal Standard**

25 The parties agree that the Supplemental Rules for Certain  
26 Admiralty and Maritime Claims govern the issue of judicial  
27 forfeitures of property in this case. *United States v. 5145 N.*  
28 *Golden State Blvd.*, 135 F.3d 1312, 1315 (9th Cir. 1998).

Pursuant to those rules,

- (i) A person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending. The claim must:
  - (A) identify the specific property claimed;
  - (B) identify the claimant and state the claimant's interest in the property;
  - (C) be signed by the claimant under penalty of perjury; and
  - (D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).
- (ii) Unless the court for good cause sets a different time, the claim must be filed:
  - (A) by the time stated in a direct notice sent under Rule G(4)(b)
  - . . . .

Supp. R. G(5).

The notice must state a deadline for filing a claim, at least 35 days after the notice is sent. Supp. R. G(4)(b)(ii)(B).

Relatedly, "at any time before trial, the government may move to strike a claim or answer: (A) for failing to comply with Rule G(5) or (6) . . . ." Rule G(8)(c)(i).

## Analysis

There is no dispute the claim was filed outside the time allotted by statute: the claim was filed on December 15, 2014. The notice granted 35 days for filing the claim. That time expired on November 25, 2014.<sup>2</sup> Alvarez urges the court to allow the answer and untimely filed verified notice of claim because the government has not been prejudiced. The parties agree the court may, for good cause, set a different time, pursuant to Rule G(5)(a)(ii). The parties disagree on whether the court should exercise such

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<sup>2</sup> The notice to claimant listed November 25, 2014, as the last possible date to file a verified claim. The government has referenced November 24, 2014, in its motions. As the parties' other assertions and the court's conclusions remain the same whether November 24 or 25 is used, the court here uses the date referenced by the government in its notice to Alvarez.

1 discretion in this case.

2       The Ninth Circuit has held a district court "should only  
3 exercise its discretion to grant additional time where the goals  
4 underlying the time restriction and the verification requirement  
5 are not thwarted." *United States v. 1982 Yukon Delta Houseboat*, 774  
6 F.2d 1432, 1435-36 (9th Cir. 1985).

7       Several factors have been identified for district courts to  
8 consider when determining whether to grant additional time. These  
9 include: when the claimant became aware of the currency's seizure,  
10 whether the United States Attorney may have encouraged the delay,  
11 whether the claimant has suffered injury or illness that may have  
12 caused a delay in filing, whether the government would be  
13 prejudiced by allowing the late filing, whether the claimant  
14 informed the government and the court of his interest before the  
15 deadline, and whether the claimant timely petitioned for an  
16 enlargement of time. *See United States v. \$100,348.00 in U.S.*  
17 *Currency*, 354 F.3d 1110, 1117-19 (9th Cir. 2004).

18       These factors provide some context for the court's  
19 consideration. Alvarez became officially aware of the seizure  
20 through direct notification by the government (#5); however, it is  
21 clear Alvarez anticipated forfeiture proceedings even before the  
22 direct notification, given his counsel's administrative filings  
23 with the DEA. Response (#17) at 5:1-5. The delay is not excused  
24 through injury or illness, as there is no representation indicating  
25 Alvarez has suffered injury or illness. However, there is some  
26 indication that Alvarez's counsel had difficulty communicating with  
27 Alvarez because he was relocated to a different prison. Response  
28 (#17) at 4:15-19.

1 Alvarez's argument principally rests on the degree of notice  
2 and prejudice present in this case. There is no contention or  
3 evidence suggesting the United States Attorney may have encouraged  
4 the delay. Nonetheless, the government was aware of Alvarez's  
5 intention to contest the forfeiture: Alvarez sent the government's  
6 attorney, who filed the pending motions to strike, two hundred  
7 twenty two pages of discovery related to his ownership of the  
8 assets and his claim on October 30, 2014. Response to Gov't's  
9 Notice (#35) at 3:13-16. Alvarez's actions reflect a clear desire  
10 to contest the forfeiture and were directed to the government  
11 attorney who is handling the forfeiture. Moreover, the answer to  
12 the government's complaint in forfeiture (#8) requests return of  
13 the property within its prayer for relief. The answer was filed  
14 timely, but did not include the verified claim.

15 Court and statutory rules and deadlines are not to be lightly  
16 cast aside. Parties have an interest in predictable and efficient  
17 outcomes. As the parties acknowledge, the court may, however, in  
18 limited circumstances, permit a late filing of the verified claim.  
19 Supp. R. G(5)(ii).<sup>3</sup>

20 In this case, the government makes no claim of prejudice, but  
21 relies solely on the failure of Alvarez to timely file his verified  
22 claim. The apparent lack of prejudice and the evident attempts by  
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24 <sup>3</sup> 18 U.S.C.A. § 983(4)(A) states a verified claim may be filed not later  
25 than 30 days after the date of service of the Government's complaint  
26 or, as applicable, not later than 30 days after the date of final  
27 publication of notice of the filing of the complaint. Here, the  
28 government has proceeded under the presumption the court has the  
authority to grant an extension pursuant to the standard enumerated in  
the Supplemental Rules. Moreover, Alvarez's claim was filed within 30  
days of the final publication of the notice. Accordingly, the court  
concludes it has the authority to permit Alvarez's verified claim and  
answer.

1 Alvarez to comply with the rules and pursue his claim militate in  
2 favor of permitting the late filing. Courts have found where a  
3 claimant has made a good-faith effort to file a claim and where the  
4 government can show no prejudice by the granting of an extension of  
5 time, it is proper to allow such an extension. See *U.S. v.*  
6 *Currency, in the Amount of \$103,387.27*, 863 F.2d 555 (1988). "This  
7 is especially true in a case where the defect is technical, where  
8 it was made by the attorney and not the claimants, and where the  
9 amount of currency is so large." *Id.* Alvarez's counsel admits the  
10 technical defect and acknowledges he was in error for not  
11 requesting an enlargement of time to file the claim; additionally,  
12 the amount of currency at issue is substantial.

13 Alvarez's counsel asserts he made no request for enlargement  
14 of time because 1) he did not expect the delays caused by his  
15 difficulty locating and communicating with his client (Response  
16 (#17) at 4:15-19) and he inaccurately believed the government had  
17 acceded to an extension, as reflected in his filing of discovery  
18 and communications with government counsel. *Id.* at 3:21-24; see  
19 also #35 at 3:13-16. These explanations demonstrate Alvarez has  
20 continuously pursued a claim to the property.<sup>4</sup>

21 Under the exceptional circumstances of this case, the court  
22 concludes there is good cause to permit the untimely verified  
23 claim. The government has cited no prejudice, and Alvarez filed his  
24 verified claim approximately two weeks after the government moved  
25 to strike the answer based on the lack of a verified claim. The  
26 government was aware Alvarez was pursuing the property, that he was

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27  
28 <sup>4</sup> Additionally, Alvarez filed his answer (#8) and his jury demand (#11)  
shortly after receiving the government's notice (#7).

1 represented, and that his counsel was compiling discovery. Since  
2 the filing of the answer, verified claim, and the government's  
3 motions to strike, discovery has proceeded and Alvarez has  
4 responded to the governments interrogatories and requests for  
5 production of documents. #34 at 3:17-19. In totality, the facts  
6 demonstrate Alvarez made a good-faith effort to file a claim. As  
7 the government has shown no prejudice, the court finds good cause  
8 to permit Alvarez to file his verified claim (#15) and append it to  
9 the answer he filed timely on November 14, 2014 (#8).

10 **Conclusion**

11 Accordingly, and based on the foregoing, it is hereby ORDERED  
12 that plaintiff United States of America's motion to strike the  
13 answer to complaint in forfeiture (#13) is DENIED.

14 IT IS FURTHER ORDERED plaintiff United States of America's  
15 motion to strike the notice of claim (#20) is DENIED.

16 IT IS SO ORDERED.

17 DATED: This 10th day of July, 2015.

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19 UNITED STATES DISTRICT JUDGE  
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